IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1030 of 1983

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHIT RAMESH INAMDAR - Petitioner(s)

Versus

USHABEN W/O RAMESHCHANDRA C TRIVEDI - Respondent(s)

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Appearance :

MR MB GANDHI for Petitioner

MR BR PARIKH for Respondent

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CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 22/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 9th March, 1983 passed by the appellate bench of Small Causes Court, Ahmedabad in Civil Appeal No. 122 of 1979, the respondent-plaintiff in H.R.P Suit

No.5329 of 1974, has preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The petitioner-plaintiff is the owner of the suit house, a residential bungalow, situated at Ahmedabad. The suit house was leased to the defendant for a monthly rent of Rs. 35/= in the year 1948. The plaintiff institued HRP Suit No. 5329 of 1974 in the Court of Small Causes at Ahmedabad for recovery of possession of the suit house on the grounds that the defendant-tenant was in arrears of rent; that he had ceased to use the suit house without reasonable cause and that the defendant had acquired a suitable alternative accommodation. The learned trial Judge, by judgment and order dated 28th February, 1979 allowed the suit and passed decree for possession in favour of the plaintiff. The learned Judge held that the defendant was not the tenant in arrears of rent; that the defendant had acquired suitable alternative accommodation and that the defendant had put the suit house to non-user for six months. Feeling aggrieved, the defendant

preferred Civil Appeal No. 122 of 1979 before the appellate bench. The appellate bench confirmed the finding that the suit house was put to non-user and that the defendant had acquired alternative accommodation. However, the appellate bench was of the opinion that the defendant cannot be said to have put the suit house to non-user without the reasonable cause. As the defendant was transferred to Mumbai by his employer, he had to leave Ahmedabad to reside at Mumbai. Hence, the defendant cannot be said to have put the suit house to non-user without reasonable cause. The appellate bench, therefore, by judgment and order dated 9th March, 1983, allowed the Appeal and set-aside the decree for possession passed by the trial Court. Therefore, the present Revision Application.

Mr. Gandhi has submitted that the defendant was employed by Calico Mills and was transferred to Mumbai sometime in the year 1960. Since then, the defendant and his family moved to Mumbai. Thereafter, the brother and the mother of the defendant were residing in the suit house. The mother of the defendant died in the suit house in

the year 1972. The brother of the defendant has also settled in Mumbai since 1974. The defendant has been allotted a residential bungalow at Mumbai by his employer. Thus, the defendant has admittedly put the suit house to non user and has acquired alternative suitable accommodation. The learned trial Judge has rightly passed decree for possession. The lower appellate court has erred in refusing to pass decree for possession on extraneous grounds. Mr. Gandhi has relied upon the judgment of this Court in the matter of **Suryakant Kanji Bheda vs. Hemlataben Indukumar Rajania** [1998 (2) GLH 138].

The Revision Application is contested by Mr. Parikh. He has submitted that the defendant did give oral evidence and deposed that the defendant had to come to Ahmedabad on official duty and was required to stay in the suit house. His wife and children also used to come to Ahmedabad frequently. Hence, the defendant cannot be evicted on the ground of non-user. As to the alternative accommodation, he has submitted that the occupation of the house at Mumbai cannot be said to be a suitable alternative accommodation. He has submitted that the appellate

bench has rightly held in favour of the defendant and dismissed the suit. He has relied upon the judgment of this Court in the matter of **Nathani Shivankumar Ghanshyamdas v. Shah Dhanalal Maneklal** [XIV GLR 779].

In the matter of **Nathani Shivankumar Ghanshyamdas** {Supra}, this Court has held that the acquisition of suitable alternative accommodation means legal possession. A mere license to reside cannot be said to be acquisition of suitable residential accommodation. In the matter of **Suryakant Kanji Bheda** {Supra}, the learned Single Judge has considered the above referred judgment in a similar set of facts. It is held that, **"even if it is presumed that a tenant makes casual visits to the leasehold premise, that** *ipso facto* **does not constitute a reasonable cause for non-user saving him from the rigours of the provisions of Section 13 (1)(k) of the Bombay Rent Act, as the casual visits to the premises would not render the non-user as non-continuous. In law constructive residence would not help the tenant. What is contemplated is the actual residence."** In the matter of **Nathani**

Shivankumar Ghanshyamdas [Supra], this Court has considered the question of acquisition of suitable alternative accommodation. It is held that, **"..it is necessary to prove that he has acquired vacant possession and that it is a suitable residence for him. Possession means legal possession. Any occupation by any person of any premises does not amount to possession."**

Mr. Parikh has relied upon oral evidence of the defendant and has vehemently argued that the defendant had to come to Ahmedabad occasionally and on such visits, he used to reside in the suit house. He also had deposed that after his retirement, he wanted to settle in Ahmedabad in the suit house. Mr. Parikh has submitted that in the present set of facts, the defendant cannot be said to have ceased to occupy the suit house continuously for six months without reasonable cause nor can he be said to have acquired a suitable alternative accommodation as envisaged by Section 13 (1)(m) of the Act.

It is admitted that the defendant was transferred to Mumbai and was allotted a residential house at Mumbai. The defendant resided in Mumbai

since 1960 till the date of his retirement i.e. for more than twenty five years. Though, it was stated that the defendant used to reside in the suit house whenever he had an occasion to visit Ahmedabad, the said statement is too vague. It was admitted that on official visits, the defendant used to stay in the Company Guest House. Besides, he did not say how many times he came to Ahmedabad and resided in the suit house. In absence of any specific evidence, the defendant cannot be said to have occupied the suit house. Even otherwise, as held in the aforesaid matter of **Suryakant Kanji Bheda** {Supra}, casual visits or an occasional visit cannot partake the nature of continuous residence, nor can a tenant be said to have reasonable cause not to use the tenanted premises because he is transferred elsewhere and is residing at the place of his duty. Admittedly, the defendant resided in Mumbai for more than twenty five years. In my view, the appellate bench has erred in holding that the defendant had ceased to reside in the suit house for reasonable cause. The learned trial Judge has rightly held that the plaintiff was entitled to decree for possession under Section 13 (1)(k) and 13 (1)(l) of the Rent

Act.

In view of the above discussion, the Revision Application is allowed with cost. The impugned judgment and order of the appellate bench, Small Causes Court, Ahmedabad passed in Regular Civil Appeal No. 122 of 1979 is quashed and set-aside. The judgment and order dated 28th February, 1979 of the Small Causes Court, Ahmedabad in HRP Suit No. 5329 of 1974 is restored. Rule is made absolute. Learned advocate Mr. Parikh requests that the execution of decree for possession be stayed for a period of ten weeks so as to enable the defendant to approach the higher forum. There shall be stay of the execution of the decree for possession passed against the defendant till 1st August, 2005.

{Miss R.M Doshit, J.}

*Prakash**